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Memorandum

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD
Date: January 13, 2012

To : Marley Hart, Executive Officer
Occupational Safety and Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

From : Ellen Widess, Chief *Ellen Widess*
Division of Occupational Safety and Health

Subject: Division Evaluation of Petition 525
Andras Uhlyarik, California Pulse, Inc.

This memorandum is written in response to the petition received by the Occupational Safety and Health Standards Board (Board) on September 21, 2011, regarding the application from Andras Uhlyarik, to revise Title 8 Sections which reference the National Fire Protection Association (NFPA) Standard 33, Standard for Spray Application Using Flammable or Combustible Materials, by adopting the language and requirements in the current 2011 Edition that pertains to spray finishing operations, for each applicable Section.

Labor Code Section 142.2 permits interested persons to propose new or revised standards concerning occupational safety and health, and requires the Board to consider such proposals, and render a decision no later than six months following receipt. Further, as required by Labor Code Section 147, any proposed occupational safety or health standard received by the Board from a source other than the Division must be referred to the Division for evaluation, and the Division has 60 days after receipt to submit a report on the proposal.

The Division has prepared this memorandum as an evaluation of the petition.

Actions Requested by the Petitioner

The petitioner, in the letter sent to the Board on September 21, proposes to modify all Title 8 Sections pertaining to spray finishing operations by adopting the language and requirements that have been published in the National Fire Protection Association (NFPA) 33 2011 Edition. The petitioner believes that these sections should have the language of NFPA 33 in order to allow employers to follow one set of requirements rather than having to follow the current requirements of Title 8 as well as referencing the current consensus standard which may have differing requirements. As stated, this proposes to modify all Sections of Article 137 Spray Coating Operations, as well as several Sections in Article 141 Container and Portable Tank Storage, and also Section 5153¹.

Existing Title 8 Regulations

¹ The Division was informed by Board staff that the petitioner specifically seeks to modify Section 5153(c)(1) to permit recirculation of exhaust air from paint spray booths, however, no modification to the petition was received. Therefore the Division can only respond to the petition currently before it. However, the Division notes that in January of 2003 Board staff convened an advisory committee for an unresolved petition to consider whether recirculation in paint spray booths could be considered in the limited circumstances permitted in the NFPA regulation. Due to concerns about employee health and safety, and feasibility, no rulemaking was proposed.

NFPA 33 is a comprehensive standard with subsections covering spray application of flammable and combustible materials that contains guidance that if adopted would affect at least the following Title 8 standards:

- In Article 107: §5153. Ventilation and Personal Protective Equipment Requirements for Spray Coating Operations. §5154. Ventilation and Personal Protective Equipment Requirements for Open-Surface Tank Operations.
- In Article 137: §5445. Scope. §5446. Spray Booths. §5447. Dry Type Overspray Collectors (Exhaust Air Filters). §5448. Washing Chamber. §5449. Electrical and Other Sources of Ignition. §5450. Ventilation. §5451. Flammable and Combustible Liquids--Storage and Handling. §5452. Fire Protection. §5453. Operation and Maintenance. §5454. Fixed Electrostatic Apparatus. §5455. Electrostatic Hand Spraying Equipment. §5456. Drying, Curing or Fusion Apparatus. §5459. Automobile Undercoating in Garages. §5460. Powder Coating. §5461. Organic Peroxides and Dual Component Coatings.
- In Article 141: §5532. Design, Construction, and Capacity of Containers. §5533. Design, Construction, and Capacity of Storage Cabinets. §5534. Design and Construction of Inside Storage Rooms. §5535. Storage in Inside Storage Rooms. §5536. Storage Inside Buildings. §5540. General Purpose or Industrial Plant Warehouses. §5541. Flammable and Combustible Liquid Warehouses or Storage Buildings. §5542. Storage Outside Buildings, and §5543. Fire Control.

Other Relevant Regulations and Guidelines

Regulations:

OSHA has specific regulations, including 29 CFR 1910.107, Spray finishing using flammable and combustible materials, and 29 CFR 1910.94, Ventilation, and 29 CFR 1910.106, Flammable and combustible liquids, that are the source of many of the existing Title 8 requirements. The existing Title 8 requirements are at least as effective as the requirements in the federal regulations.

Guidelines:

NFPA Standard 33, Standard for Spray Application Using Flammable or Combustible Materials 2011 Edition in its entirety has consensus guidelines for the Sections listed above. The American National Standards Institute and the American Industrial Hygiene Association have published a number of consensus standards on topics addressed in NFPA 33.

Discussion

General incorporation of the current NFPA 33 into Title 8

Although there is merit to the concept of revising existing standards to incorporate the most current consensus standards when the changes provide safer or healthier working environments, the proposed modification identifies no improvement to the protection that is already provided. The proposed modification would also include the process of adopting new, or replacing existing subsections of the two dozen Sections listed above, including many paragraphs and subparagraphs with the current language of NFPA 33. This would require review and consideration of each proposed change, both in terms of the health and safety impact on various operations, and in terms of the requirements of the Administrative Procedures Act. Alternatively, the Board could undertake combining all the sections into one section which adopts the NFPA language. For either action, the process of advising the affected stakeholders of the proposed changes for each affected industry and conducting the appropriate process as required by the Administrative

Procedures Act would be extremely resource intensive for both the Board and the Division. The Division does not believe that removal of the current sections and incorporation of the current NFPA 33 would be in accordance with the Board's general policy, and requirements in Title 1, California Code of Regulations, Section 20, which only permits incorporation by reference if adoption directly into the code would be cumbersome, unduly expensive, or otherwise impractical.

The current regulations generally provide good protection for employees against both fire and health hazards. In the Division's experience, the regulations are protective, enforceable and feasible, and are consistent with State and local fire codes. The necessity for this type of general overhaul has not been demonstrated.

Evaluation for Equivalence with OSHA standards

The existing Sections that would be affected by the proposed modification are derived from and at least as effective as the corresponding OSHA regulations. It is not readily apparent that every change resulting from the overall adoption of NFPA 33 would not render some section less effective; each Section would need a detailed evaluation and comparison with stakeholder participation to make this determination.

Modification to Petition

Although Board staff apparently had some conversation with the petitioner regarding a modification or limitation of the petition, the Board has not received nor provided to the Division a modification of the petition. The Division can only provide an evaluation of the material submitted.

Recommendation

The proposed modification to Title 8 is very broad in scope, and neither the petition, nor the Division's experience, supports the necessity for this overhaul, or for the level of rulemaking activity that would be required. In addition, it is likely that questions of federal equivalence would arise for many of the specific changes. Therefore the Division recommends that the current petition be denied.

The Division is prepared to provide an evaluation of a more specific petition, should the petitioner identify specific provisions of Title 8 he believes should be addressed.

cc: Robert Nakamura
Steve Smith
Deborah Gold
Suzanne Marria